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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/784,858	02/23/2004	Jason Tyler Griffin	ID-267 (80213)	9424
27975 7590 10/11/2007 ALLEN, DYER, DOPPELT, MILBRATH & GILCHRIST P.A. 1401 CITRUS CENTER 255 SOUTH ORANGE AVENUE P.O. BOX 3791 ORLANDO, FL 32802-3791			EXAMINER VU, MICHAEL T	
			ART UNIT 2617	PAPER NUMBER
			NOTIFICATION DATE 10/11/2007	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

creganoa@addmg.com

## Office Action Summary

**Application No.**

10/784,858

**Applicant(s)**

GRIFFIN, JASON TYLER

**Examiner**

Michael Vu

**Art Unit**

2617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 June 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-18,20-24 and 26-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-18,20-24 and 26-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 June 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Arguments***

1. The Applicant submitted with the wrong set of claims filed on June 29, 2007 that is not corresponding to a Non-final Rejection was filed on April 05, 2007.

(Please see the Office Action Summary (PTO-326), and the Office Action Rejection from the Examiner filed on April 05, 2007, on page 2 until page 7).

2. The new drawing has received on June 29, 2007.

3 Applicant's Remarks/Arguments filed June 29, 2007, have been fully considered but they are not persuasive.

4. On page 13 of Applicant's Remarks, Applicant argues that "Aarnio and Dolwin fails to teach a subscription server cooperating with the central station to discontinue providing subscription data to the respective mobile cellular communication devices based upon an initiation of a telephone call", on page 13, lines 13-17.

On page 14 of Applicant's Remarks, Applicant argues that "Fry does not disclose a subscription server cooperating with a central station to discontinue providing subscription data to respective mobile cellular communications devices based upon initiation of telephone calls", on page 14, lines 1-4.

In response, the examiner has been carefully reviewed the Applicant's Remark. However, the examiner must give the broadest reasonable interpretation to all claims that Fry clearly teaches a method and system in which have the capability allowing the subscriber and/or user to downloading such as texts/contents, sounds, images and videos from a server to mobile devices via the wireless or the mobile cellular communication network (See paragraphs [0001-0005]).

Moreover, Fry indeed clearly disclose a solution for downloading messages and/or set(s) of messages by allowing suspending, resuming, and/or hang up, postpone, delay capability of the multimedia message downloading.

Furthermore, Fry disclose **a message transmission is halted**. Although the message delivery is suspended and/or hang up, postpone, delay capability, the session may be continued. That way, it is possible for the user to start downloading of another message, **start a call or the like** (*the Examiner broadly interpreted that while downloading the contents, it discontinues or puts downloading on hold to initiate a phone call, after phone called it continues downloading whatever the transmission have left*). It is also possible to terminate the session after suspending the message delivery. Thereafter, the network resources reserved for the session and message delivery may be released. It is of advantage to release these resources, in particular costly resources, in terms of reducing the overall network loading, connection costs etc. The release of resources may preferably be effected after checking that no other activity is required for this session. However, when other activities are intended or required for this session,

the reserved resources may be maintained, i.e. not released (See paragraphs [0009-0011]).

Therefore, the argued limitations are the same as disclosed by the reference or the limitations are written broad such that they read on the cited art, rejections are maintained as repeated below:

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-2, 4-18, 20-24, and 26-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over AARNIO (US 2004/0078274) in view of Dolwin (US 2003/0092421), and further in view of Fry (US 2004/0117459).

Regarding **claims 1, 10, 17 and 23**, AARNIO teaches a cellular communications system (Fig. 1, Mobile Terminal #14 and Mobile Network/Base Station #12) comprising: a plurality of mobile cellular communications devices each associated with a respective user (Fig.1-2); at least one cellular base station (Fig. 1) for wirelessly communicating

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with said plurality of mobile cellular communications devices (Fig. 1), said at least one cellular base station having a capacity associated therewith (Fig. 1-2); and a central station (Mobile Provider/Mobile Switching Center, [0002]) for determining available capacity of said at least one cellular base station based upon active wireless communications with said mobile cellular communications devices [0012, 0021-0023]; and a subscription server for cooperating with said central station to provide non-real time subscription data to users on respective mobile cellular communications devices via said at least one cellular base station [0012, 0021-0023]

**But is silent on** when the determined available capacity thereof is greater than a threshold.

However, Dolwin teaches the data transmission system that includes a plurality of radio base stations in communication with a plurality of mobile communications devices over a radio interface, in which an operation and maintenance centre (OMC) 29 collects the statistics from network infrastructure elements such as base stations and switches to provide network operators with a high level view of the network's performance. The OMC uses to determine how much of the available capacity of the network or parts of the network is being used at different times of day. The time of low traffic may be identified by detecting when measured traffic at an interface falls below a threshold level or by analyzing historical data to determine a period when low traffic is expected. The reference to the traffic going below a threshold level could in some systems, be described more accurately as available capacity in the system going above a certain threshold [0004, 0013-0015].

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify AARNIO, such that when the determined available capacity thereof is greater than a threshold, to improve the performance of the less traffic and more efficient data/electronic transfer files over the wireless communications network.

**But AARNIO and Dolwin do not clearly disclose on** said subscription server cooperating with said central station to discontinue providing subscription data to respective mobile cellular communications devices based upon an initiation of a telephone calls.

However, Fry teaches a method and system for a network having the client and/or the server is capable of suspending and resuming downloading of the multimedia message, in which when the client or server generates a command for suspending a current downloading of a multimedia message, the server suspends the downloading of the multimedia message, and a marker is generated for marking the position of suspending the multimedia message. When the client or server generates a command for resuming the suspended downloading of the multimedia message, the server resumes the downloading from the position of suspending marked by the marker. The client when receiving additional subsequent portions of the multimedia message after generating a marker for marking the position of suspending the multimedia message, stores these additional subsequent portions of the multimedia message, generates a new marker pointing to the end of the received additional subsequent portions of the multimedia message, and stores the new marker (See [0009-0015]).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify AARNIO/Dolwin, such that the subscription server cooperating with said central station to discontinue providing subscription data to respective mobile cellular communications devices based upon an initiation of a telephone calls, to avoid and/or prevent the redundant transmissions such as continue to download where it has left for saving cost and no time is wasted to users.

Regarding **claims 2, 18 and 24**, AARNIO/Dolwin/Fry teach a cellular communications system of claim 1 wherein said subscription server cooperates with said central station to discontinue providing subscription data when the determined available capacity falls below the threshold [Fig. 1 Prior Art, 0004, 0013-0015] of Dolwin.

Regarding **claims 4, 11 and 26**, AARNIO/Dolwin/Fry teach a cellular communications system of claim 1 wherein said central station maintains accounts for respective users; wherein said central station charges user accounts differently for providing wireless voice communications and non-real time subscription data [0010-0013, 0020-0023] of AARNIO.

Regarding **claims 5, 12 and 27**, AARNIO/Dolwin/Fry teach a cellular communications system of claim 1 wherein said at least one cellular base station generates capacity usage information, and wherein said central station determines the available capacity based thereon [0004, 0013-0015] of Dolwin.

Regarding **claims 6, 13, 20 and 28**, AARNIO/Dolwin/Fry teach a cellular communications system of claim 1 wherein said subscription server further cooperates with said central station to provide a subscription data menu to users on respective



mobile cellular communications devices, and wherein users order non-real time subscription data based upon the subscription data menu [0004, 0023-0026] of AARNIO.

Regarding **claims 7 and 14**, AARNIO/Dolwin/Fry teach a cellular communications system of claim 1 further comprising a wide area network (WAN) connecting said subscription server to said central station (Fig. 1, Prior Art) of Dolwin.

Regarding **claims 8, 15, 21 and 29**, AARNIO/Dolwin/Fry teach a cellular communications system of claim 1 wherein the subscription data comprises at least one of news articles, books, video game data, image data, and television programming schedule data [0004, 0022-0023] of AARNIO.

Regarding **claims 9, 16, 22 and 30**, AARNIO/Dolwin/Fry teach a cellular communications system of claim 1 wherein the subscription data comprises electronic mail (email) data (Short Message Service SMS [0011]) of AARNIO.

### ***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Vu whose telephone number is (571) 272-8131. The examiner can normally be reached on 8:00am - 6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Feild can be reached on 571-272-4090. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Michael T. Vu  
Examiner

JEAN GELIN  
PRIMARY EXAMINER

